

October 28, 2005

**REQUEST BY THE ATTORNEY GENERAL OF THE STATE OF UTAH
FOR PROPOSALS TO SERVE AS COUNSEL FOR THE UTAH CAPITAL
INVESTMENT BOARD AND THE UTAH CAPITAL INVESTMENT
CORPORATION FOR THE ISSUANCE OF UTAH CONTINGENT TAX
CERTIFICATES AND FINANCING FOR THE STATE OF UTAH
SPONSORED UTAH FUND OF FUNDS PROGRAM.**

**PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN
END OF BUSINESS ON FRIDAY, NOVEMBER 11, 2005**

To the Law Firm(s) or Attorney(s) Addressed:

The Attorney General is requesting proposals from attorneys and firms interested in serving as counsel for the Utah Capital Investment Board (UCIB) and the Utah Capital Investment Corporation (UCIC) for the issuance of Utah contingent tax certificates and financing for the State of Utah sponsored Utah Fund of Funds program.

OVERVIEW

The 2003 General Session of the Utah Legislature passed H.B. 240, titled Utah Venture Capital Enhancement Act, which was signed into law by Governor Mike O. Leavitt. H.B. 240 has subsequently been amended twice; 2003 Special Session 2 passed H.B. 2004, which was signed into law by Governor Olene Walker and 2005 General Session passed H.B. 179, which was signed into law by Governor Jon Huntsman, Jr. H.B. 240, H.B. 2004 and H.B. 179 enacted new Utah Code Ann. § 63-38f-1201 - § 63-38f-1224. Utah Code Ann. § 63-38f-1206 and § 63-38f-1207 are the relevant statute for this request for proposals ("RFP"). The entire Utah Venture Capital Enhancement Act is attached hereto and incorporated herein by reference as Exhibit A.

Utah Code Ann. § 63-38f-1206 authorizes UCIB to issue up to \$100 million in Utah contingent refundable tax certificate in return for a financier's investment in the Utah Fund of Funds program at a UCIB established rate of return or cost of capital. UCIB has selected a financier, which is Deutsche Bank, who has committed \$100 million in financing in return for a \$100 million in Utah contingent refundable tax

certificate and a limited claim to the profits of the Utah Fund of Funds determined by the UCIB established rate of return.

UCIB is also authorized to tie redemption of a Utah contingent refundable tax certificates to the financier's equity interest in the Utah Fund of Funds. Utah Code Ann. § 63-38f-1207 authorizes UCIC to organize the Utah Fund of Funds and in § 63-38f-1214 it states that the Utah Fund of Funds shall be organized as a limited partnership or limited liability company under Utah law having the corporation as the general partner or manager and provide for equity interests to the financier which provide for a designated scheduled rate of return and a scheduled redemption.

Basically, counsel must consider both UCIB and UCIC's involvement and authority in negotiating the appropriate terms and conditions for the Utah Fund of Funds financing.

UCIB anticipates completing the financing of the Utah Fund of Funds as soon as possible. The financier is ready to proceed with formal documents.

NATURE OF THE APPOINTMENT

Counsel appointed under this RFP will provide the necessary services for UCIB and UCIC to obtain financing from Deutsche Bank.

APPOINTMENT BY ATTORNEY GENERAL

The Attorney General is appointing counsel under this RFP pursuant to Utah Code Ann. § 67-5-5 (West 2004). The procedures the Attorney General will follow in making the appointment are set forth in Rule R105-1 of the Utah Administrative Code.

In response to this RFP, the Attorney General will consider proposals from any firm. As used in this RFP, the term "firm" refers to any of the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or an individual attorney or two or more attorneys in association with a law firm or two or more law firms.

TERM OF APPOINTMENT

Counsel appointed under this RFP will serve in its capacities only until the completion of the financing of the Utah Fund of Funds, unless the Attorney General modifies the appointment.

RESPONSIBILITIES OF COUNSEL

Counsel will have the responsibilities, and perform the functions, usually associated with a counsel in a financing of the type described in this RFP. These services will likely include, but will not be limited to: (a) consulting with UCIB and UCIC, (b) negotiating with Deutsche Bank and its representatives, and (c) drafting the

appropriate documents.

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS COUNSEL

Proposals must address the following criteria, which the Attorney General will use to select counsel:

- A. The ability of the firm to complete the transaction in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
 - 1. The experience of the firm with as counsel in dealing with: (a) private equity funds similar to the Fund of Funds, (b) state and federal tax law; and (iii) structured financings.
 - 2. The professional resources available to assist with representation, and the names and qualifications of the principal attorney(s) who would be assigned to work on the transaction. The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as counsel.
 - 3. The availability of the firm to complete work in a timely and professional manner.
 - 4. Any potential conflicts the firm may have in accepting appointment as counsel under the RFP.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event transaction cannot be completed. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET WHAT THE LEGAL FEES FOR COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to completed transaction, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE OR THE ATTORNEY GENERAL'S OFFICE. PAYMENT MUST COME FROM THE FEES UCIC WILL OBTAIN ONLY AFTER THE FINANCING IS COMPLETED. The Attorney General, in consultation with the appropriate officials from UCIB and UCIC, will allow for adjustments in counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by counsel, and if funds are available from the

financing.

OTHER MATTERS SELECTING COUNSEL

1. The Attorney General, after consulting with officials for UCIB and UCIC, will make the determination for the selecting of counsel.
2. Should a key attorney in the firm selected leave that firm during the period of the firm's appointment under this RFP, the Attorney General reserves the right, in the sole discretion of the Attorney General, to (a) have the appointment follow the attorney to the attorney's new firm, (b) leave the appointment with the firm originally appointed, or (c) appoint a new firm to fill the appointment for the remainder of the period.

DEADLINE FOR SUBMITTING PROPOSALS

Written proposals must be received by the Utah Attorney General, c/o Jerrold S. Jensen, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than end of business on Friday, November 11, 2005**. A firm need submit only ONE copy of the firm's proposal(s). The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

THE SELECTION PROCESS

In General

The Attorney General will select counsel based upon each of the criteria set forth above under the respective headings of "**REQUIRED CONTENTS OF PROPOSALS FOR COUNSEL.**" All criteria set forth under those headings are important, but the criteria in paragraph A under each heading will be given the greatest weight. Each of the subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials, UCIB, and UCIC, and from other individuals who have had experience with firms submitting proposals. The Attorney General in making the selection may consider such input.

Oral Presentations

After reviewing the written proposals, the Attorney General may select counsel; however, the Attorney General reserves the option of selecting several of the top applicants for counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General's attention by the Attorney General's staff and officials from UCIB and UCIC, the amount of time available to hear such presentations, and the Attorney General's own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General's own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the selection.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After these presentations, the Attorney General will select counsel.

NOTICE OF SELECTION

After the Attorney General has selected the firms, the selected firms will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After firms have been selected that are willing to, and do, accept the appointments under this RFP for counsel, a general announcement will be made to the public. It is anticipated counsel will be named around November 18, 2005, but that date may change without notice. Interested persons can learn the names of the firm(s) appointed by calling (801) 366-0383 on December 1, 2005.

NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED AND OF INFORMATION IN PROPOSALS; POSSIBLE REQUIREMENT TO DISCLOSE

Administrative Rule R105-1 provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63, Utah Code Ann. (West 2004)). GRAMA makes most documents held by government entities in the State of Utah "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents

received by the Attorney General's office, including proposals received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63-2-308 (West 2004).**

FURTHER INFORMATION

Should you have questions relating to the business aspects of the representation, you may contact: Jeremy Neilson, Manager for Utah Fund of Funds program, at 801-538-8726. Firms should feel free, and are encouraged, to contact Mr. Neilson directly with any questions they may have regarding the business aspects of the representation described above. There is no need for a firm to contact the Attorney General's office first before making inquiry of the Utah Fund of Funds Program.

Should you have questions relating to this RFP, or relating to the Attorney General's process of selecting counsel, you may contact Jerrold Jensen of the Utah Attorney General's Office (telephone 801-366-0350; fax 801-366-0352; or e-mail at jerroldjensen@utah.gov).